

1985 July 27

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

EVANGELIA IOANNIDES, AS ADMINISTRATRIX
OF THE ESTATE OF SAVVAS BOEROS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 183/81).

-
- Income Tax—Time of accruing of liability to pay tax—Quantification and recovery of taxes governed by Law in force at the time of such quantification and recovery—This does not amount to retrospective taxation—Quantification made*
- 5 *in 1981—The provisions of Law 4/1978 (amended by Laws 23/78 and 41/79) rightly applied, notwithstanding that the object was to quantify the taxable income in respect of the years of assessment 1968(67)-1969(68) and 1970(69).*
- 10 *Income Tax—Additional assessment—Six years time bar (section 23(1) of Law 4/1978)—Time extended to twelve years in cases of fraud or wilful default (section 23(2) of Law 4/1978)—It is not necessary for such increase of the*
- 15 *time limit for a person to be found guilty of fraud or wilful default by a Court of Law.*
- Income Tax—Objection against an assessment—No time limit for its determination—Power of the Commissioner, when determining an objection, to increase the object of tax—*
- 20 *Not necessary for him to resort to the machinery of raising an additional assessment.*
- Constitutional Law, Articles 24 and 28—Income of wife can-*

not validly be deemed to be the income of the husband—Section 15 of Law 60/1969 (section 22 of Law 58/1961 as amended by Law 60/1969) unconstitutional.

Investment income abroad not remitted to the Republic—Section 5 of Law 58/1961—Not taxable, if derived prior to the coming into operation of Law 60/1969, s.4 (1). 5

Onus of satisfying Court that an assessment is excessive rests on the tax payer.

Administrative Law—Court has no jurisdiction to go into the merits of a decision—It only scrutinises its legality and whether the administration exceeded the outer limits of its powers—In the end the decision will be sustained, if on the material before the administrative organ, the decision was reasonably open to such organ. 10

The late Savvas Boeros (hereinafter referred to as the “taxpayer”), a businessman of Nicosia, has objected, in 1970, to the assessments of his income that were raised for the years of assessment 1968 and 1969 (years of income 1967 and 1968). Additional assessments were raised on 30.12.74 for the year 1968(67) and on 29.12.1975 for the year 1969(68). No additional assessment was raised to replace the original assessment for 1970(69). The taxpayer raised objection to these additional assessments and the assessment for 1970. The objections are dated 7.1.75, 15.1.76 and 13.10.70. 15 20 25

In 1973 the taxpayer made and submitted to the authorities a statement of his and his wife’s assets and liabilities as on 28.9.1972 as shown in the accounts of his firm. He also filed a full disclosure certificate stating that he had revealed all of his and his wife’s assets and liabilities in Cyprus and abroad. 30

After the taxpayer’s death a certain Yiannakis Michaelides, the manager and caretaker of deceased taxpayer’s affairs in London, revealed to the respondent, that the deceased taxpayer owned property in London, i.e. one three storey building owned by the deceased taxpayer and his wife and another building owned by the deceased taxpayer and the said Michaelides; the latter has furnished the 35

respondent with detailed informations regarding accounts of his management for the above property. This information was not brought to the knowledge of the applicant who has been appointed administratrix of the deceased taxpayer's estate.

The years were passing and no particulars were forthcoming to the respondent from the said administratrix though her tax consultant asked for further deferment of the determination of the objections regarding the assessments hereinabove mentioned. Finally on 23.2.1981 the sub judge decision was taken by the respondent and notices of the assessments dated 7.3.1981, pursuant to that determination, were made.

By the sub judge decision the objections for the income of the deceased taxpayer for the years 1968(67) - 1970(69) are determined and additional assessments were raised for the years of assessment 1971(70) - 1979(78). This case, however, has nothing to do with the additional assessments. The decision was taken by the respondent on the material and evidence in his possession. By the sub judge determination the income for the year of assessment 1968(67) was raised from £1,437 to £9,704, for the year 1969(68) from £1,186 to £2,449 and for 1970 from £1,000 to £2,609.

The grounds of Law on which the recourse was based appear at p. 1812.

Held, (A) The liability to pay tax accrues in the year when the income was earned irrespective of whether a notice of assessment was served on the taxpayer or not. It is a cardinal rule embodied in Article 24.3 of the Constitution that no tax, duty or rate of any kind whatsoever may be imposed with retrospective effect. The subsequent assessment of the exact amount of tax payable in respect of a particular year would not amount to imposing tax with retrospective effect (*Kyriakides v. The Republic*, 4 R.S. C.C. 109 followed). When liability for tax accrues and is neither met nor extinguished, the statutory provisions applicable for the quantification and recovery of such tax are the laws in force at the time of such quantification and recovery. This does not amount to retrospective taxation.

Law 53/1963 is a Law to provide for machinery and quantification of taxes. It was amended by Law 61/1969 and it was later repealed and substituted by Law 4/1978 that was amended by Laws 23/1978 and 41/1979. This legislation regulates the machinery of assessment of taxes and not the jurisdiction to charge tax which is derived from the income tax Laws. The respondent, therefore, rightly applied the Law, relating to the machinery of quantification and recovery, in force at the time of the determination of the taxpayer's objection (Law 4/1978).

Additional assessments can be made during the six year time limit provided by section 23(1) of Law 4/1978. This time limit is increased to 12 years where a person is found guilty of fraud or wilful default (section 23(2) of the same Law). It is not necessary for such increase of the time limit for a person to be found guilty of fraud or wilful default by a Court of Law. It is sufficient if such finding was reasonably open to the Commissioner on the evidence before him. This matter, however, does not arise in the present case as the sub judice decision is not an additional assessment, but the determination of a pending objection, against assessments validly raised in 1970, 1974 and 1975. As there is no time limit for the determination of such objection, the fact that the objection in this case was determined by the sub judice decision in 1981, does not affect the validity of such decision.

The proposition that in determining an objection the Commissioner has only a limited power either to sustain or overrule the objection but not to increase the chargeable income is untenable having regard to the proviso to subsection 5 of s.20 of Law 4/1978. This proviso read in the context of the Law as a whole empowers the Director to increase the amount of the object of the tax, when there is an objection, without resorting to the provisions of s.23 for additional assessment.

(B) The respondent in this case charged in the name of the taxpayer the income of his wife derived from rents of one-half share of a house in London. The relevant legislation is section 15 of Law 60/1969 whereby section 21(1) of Law 58/1961 was repealed and substituted and re-

numbered as section 22. As the legislation under which the income of the wife in the present case was deemed to be the income of the husband and was charged in his name is unconstitutional (*Demetriades v. The Republic (Minister of Finance and Another)* (1974) 3 C.L.R. 246 and on Appeal *The Republic (Minister of Finance and Another) v. Demetriades*, (1977) 3 C.L.R. 213, followed), that part of the sub judge decision would be declared null and void.

10 (C) The investment income of a taxpayer arising outside the Republic and not remitted in the Republic could not be made the object of taxation prior to the coming into operation of the Income Tax (Amendment) Law 60/1969 section 4(1) whereby the relevant provisions of section 5
15 of Law 58/1961 were amended.

In the present case the income from rents derived from property owned by the taxpayer in London is an investment income. The tax is payable at the rate or rates specified for each year of assessment upon the income of a
20 person accruing from any rent in the year prior to it, i. e. income from rents in 1967 is taxable under the Law in operation in 1968, and rents of 1968 under the Law in force in 1969.

As in the present case the said income was not remitted
25 in Cyprus, the sub judge decision, so far as it relates to the rents received by the taxpayer in 1967 (year of assessment 1968) would be annulled.

(D) The onus of satisfying the Court that an assessment is excessive rests on the taxpayer. The Commissioner in order to increase the object of the tax should not act on conjectures; he may, however, draw reasonable inferences from the material before him. The approach of this Court in tax cases is the same as in any other recourse against any administrative decision. There is no jurisdiction to go
30 into the merits of the taxation. The power of this Court is limited to the scrutiny of the legality of the action, and to ascertain whether the Administration has exceeded the outer limits of its powers. Provided they confine their action within the ambit of their powers, the organs of public administration are the arbiters of the decision ne-
35
40

cessary to give effect to the Law. In the end, the Court must sustain their decision if it was reasonably open to them. The rules of natural justice are not applicable in this tax case. Having regard to the totality of the material before the respondent at the material time, it was reasonably open to the Commissioner to reach the sub judice decision (with the exception of the investment income of 1967 and the income of the wife). 5

(E) The contents of the sub judice decision coupled with the material in the file constitute sufficient reasoning. 10

Recourse partly succeeds.

No order as to costs.

Cases referred to:

- Kyriakides v. The Republic*, 4 R.S.C.C. 109;
- Christou v. The Republic*, (1965) 3 C.L.R. 214; 15
- Matsis v. The Republic*, (1969) 3 C.L.R. 245;
- The Republic v. Frangos*, (1965) 3 C.L.R. 641;
- Mavrommatis v. The Republic*, (1966) 3 C.L.R. 143;
- Arumugan Pillai v. The Director-General of Inland Revenue*, (1981) S.T.C. 146; 20
- Hawkins v. Fuller (Inspector of Taxes)* [1982] S.T.C. 428;
- Demetriades v. The Republic (Minister of Finance and Another)* (1974) 3 C.L.R. 246 and on appeal *The Republic (Minister of Finance and Another) v. Demetriades* (1977) 3 C.L.R. 213; 25
- Vita Ora Co. Ltd. v. The Republic*, (1973) 3 C.L.R. 273;
- Mangli v. The Republic*, (1983) 3 C.L.R. 52;
- Solomonides v. The Republic*, (1968) 3 C.L.R. 105;
- Pikis v. The Republic*, (1965) 3 C.L.R. 131; 30
- Georghiades v. The Republic*, (1982) 3 C.L.R. 659;

Georgiades v. The Republic, (1972) 3 C.L.R. 157;

Five Bus Tour Limited v. The Republic, (1983) 3 C.L.R. 793;

Kontemeniotis v. C.B.C., (1983) 3 C.L.R. 1027;

5 *Karatsi v. The Republic*, (1984) 3 C.L.R. 488.

Recourse.

10 Recourse against the income tax assessments raised on the deceased Savvas Boeros for the years of assessment 1968 - 1970.

P. Polyviou, for the applicant.

A. Evangelou, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

15 STYLIANIDES J. read the following judgment. Savvas Boeros, a merchant of Nicosia, passed away on 22.4.78 and Evangelia Ioannides, the applicant in this case, was granted letters of administration of his estate on 14th June, 1978. In her capacity as such administratrix by this recourse she
20 challenges the validity of the act or decision of the respondent dated 23.2.81 and the consequential relevant notices of income tax payable by the said deceased for the years 1968(67), 1969(68) and 1970(69).

25 The late Savvas Boeros (hereinafter referred to as "the taxpayer") was a businessman of Nicosia. He was originally assessed to income tax on his income for the years of assessment 1968 and 1969 (years of income 1967 and 1968) by Assessments No. 3280/68 dated 15.10.68 and 4278/69 dated 15.10.69 and for 1970(69) by Assessment
30 No. 4322/70 dated 1.10.70. Additional assessments were raised on 30.12.74 for the year of assessment 1968(67) and on 29.12.75 for the year 1969(68). No additional assessment was raised to replace the original assessment for 1970(69).

35 The taxpayer raised objection to these additional assess-

ments and the assessment for 1970. The objections are dated 7.1.75, 15.1.76 and 13.10.70, respectively.

The taxpayer on 23.1.73 made and submitted a statement of his and his wife's assets and liabilities as on 28.9. 1972, as shown in the accounts of the firm "Savvas Boeros & Sons". On 18.11.74 the taxpayer signed a full disclosure certificate stating that he revealed to the respondent Commissioner all of his and his wife's assets and liabilities existing both in Cyprus and abroad - (See exhibits No. 1A and 1B attached to the address of counsel for the respondents). In neither of the aforesaid documents he mentioned any assets abroad.

After the death of the taxpayer a certain Yiannakis Michaelides of London by two letters dated 3.1.79 and 23.1.79 gave to the respondent very material and valuable information. Yiannakis Michaelides is a close relative of the deceased. He purchased in 1967 with him two three-storey buildings in London. The one was ever since owned in equal shares by the deceased taxpayer and his wife and the other by the deceased and the said Michaelides. Michaelides was from 1967 until after the appointment of the applicant as administratrix the manager and caretaker of the affairs of the deceased and his wife in London. He was collecting the rents and effecting all necessary payments for the said houses. He was meticulously keeping books and accounts of his management and for all intents and purposes he was the sole agent of the deceased and his wife in London in respect of the two houses and the yield thereof.

The years were passing and though the objections to the assessments were raised in 1970, 1975 and 1976, no particulars were forthcoming to the respondent from the taxpayer or the administratrix of his estate, and sometime late in 1980 the tax consultant of the administratrix asked for the further deferment of the determination of the objections. It is noteworthy, however, that the detailed information contained in the two letters of Michaelides was not brought to the knowledge of the applicant or her tax consultant. Finally on 23.2.81 the sub judice decision was taken by the respondent and notices of the assessments

dated 7.3.81, pursuant to that determination, were made.

By the sub judge decision the objections for the income of the deceased taxpayer for the years 1968(67) - 1970(69) are determined and additional assessments are raised for the years of assessment 1971(70) - 1979(78). We are not concerned, however, in this case with these additional assessments. The decision was taken by the respondent on the material and evidence in his possession. I consider pertinent to quote seriatim the material part of this decision:

10 «Επιθυμώ να αναφερθώ εις τας φορολογικάς υποχρεώσεις του αποβιώσαντος Σάββα Ποέρου δια τα φορολογικά έτη 1968/67 έως 1979/78 ως και εις τας ενστάσεις του κατά των φορολογιών του εισοδήματος του δια τα έτη 1968/67 έως 1970/69 και να σας πληροφορήσω ως εξής:

15 α) Ο ως άνω φορολογούμενος παρέλειψε από την ενυπόγραφο δήλωσιν της περιουσίας του, που υπεβλήθη την 23.1.73 μέσω του εγκεκριμένου λογιστού κ. Ι. Γ. Παπακυριακού, τα ακόλουθα:

20 i) Λογαριασμόν καταθέσεως μετά της Τραπέζης Κύπρου Λτδ.

ii) Δύο κατοικίες εις Λονδίνον επί των οδών 38, Salisbury και 34, Umfreville.

25 iii) Λογαριασμόν καταθέσεως μετά της ABBEY NATIONAL BUILDING SOCIETY.

iv) Εισόδημα εξ επενδύσεων εις Ηνωμ. Βασίλειον ήτοι ενοίκια και τόκους.

30 β) Παρ' όλον ότι παρήλθε αρκετός καιρός από την δεύτερη συνάντησιν σας μεθ' ενός Αρχιφοροθέτου εις το γραφείον σας την 25.7.80 ως και επανειλημμένας τηλεφωνικάς επικοινωνίας και μιάς συναντήσεως του κ. Φάνου Ιωνίδη μεθ' ενός Αρχιφοροθέτη εν τούτοις περαιτέρω αναβολή ουδένα σκοπόν θα εξυπηρετούσε και επειδή εκκρεμεί η υπόθεσις του ως άνω αποβιώσαντος προ του Εφόρου Φόρου Κληρονομιών και αφού εμελέτησα την υπόθεσιν σας επί τη βάση των εις χείρας μου στοιχείων απεφάσισα όπως καθορίσω το φορολογητέον

εισόδημα του ως άνω αποβιώσαντος δια τα φορολογικά έτη 1968/67 έως 1970/69 και αναθεωρήσω την φορολογία του δια τα φορολογικά έτη 1971/70 έως 1979/78 ως κάτωθι:

(Παρακαλώ ίδε επισυναπτόμενο παράρτημα).

5

Φορολογικόν Έτος	1968/67	£9,704
»	» 1969/68	2,449
»	» 1970/69	2,609

2. Επισυνάπτονται έντυπα I.R. 8 και η προσοχή σας εφιστάται εις το Άρθρον 21 του Περί Βεβαιώσεως και Εισπράξεως Φόρων Νόμων του 1978 και 1979 για τα φορολογικά έτη 1968/67 έως 1970/69 και εις το Άρθρον 20 του ως άνω αναφερομένου Νόμου για τα Φορολογικά Έτη 1971/70 έως 1979/78».

10

15

("I wish to refer to the tax obligations of the deceased Savvas Petrou Boerou for the tax years 1968/67 to 1979/78 as well as to his objection against taxation of his income for the years 1968/67 to 1970/69 and to inform you as follows:

20

a) The above-mentioned taxpayer omitted from his signed statement of his property, which was submitted on 23.1.73 through the Certified Accountant, Mr. I. G. Papakyriacou, the following:

- i) A deposit account with the Bank of Cyprus Ltd. 25
- ii) Two houses in London on 38, Salisbury Str., and 34, Umfreville Str.
- iii) A deposit account with ABBEY NATIONAL BUILDING SOCIETY.
- iv) Income from investments in the United Kingdom, that is rents and interest. 30

b) Even though sufficient time elapsed since your second meeting with a Chief Tax Officer in your office on 25.7.80 as well as repeated telephone communications and a meeting of Mr. Phanos 35

5

Ionides with a Chief Tax Officer, yet further post-
 ponement would have served no purpose and be-
 cause the case of the above-named deceased is
 pending before the Commissioner of Estate Duty
 and having studied your case on the basis of the
 evidence in my hands, I have decided to fix the
 taxable income of the above-named deceased for
 the tax years 1968/67 to 1970/69 and review
 his taxation for the tax years 1971/70 to 1979/78
 as follows:

10

(Please see attached annex)

Tax year 1968/67	£9,704
Tax year 1969/68	2,449
Tax year 1970/69	2,609

15

.....

2. Forms I. R. 8 are attached and your attention is
 drawn to section 21 of the Verification and Collec-
 tion of Taxes Laws of 1978 and 1979 for the tax
 years 1968/67 to 1970/69 and to section 20 of the
 above mentioned Law for the Tax Years 1971/70 to
 1979/78").

20

25

30

35

By this determination the income for the year of assess-
 ment 1968 was raised from £1,473.- to £9,704., for the
 year 1969 from £1,186.- to £2,449.- and for 1970 from
 £1,000.- to £2,609.-. In the details, as shown in the sub
 judice decision and the notices, £5,650.- remitted to Lon-
 don from Nicosia in April, 1967, and £2,000.- remitted in
 the same way in December, 1967, are treated as income.
 Furthermore the income from both houses of the share of
 the deceased and his wife, as detailed in the letters of Mi-
 chaelides, less 25%, is also treated as taxable income. In
 the letters of the tax consultant which ensued and in the
 address of counsel for the applicant dated 2.6.82 the re-
 mittances to London are flatly denied - (See page 9 of the
 address).

The sub judice decision and notices are challenged on
 the following grounds:-

- (a) The respondent acted without authority as the assessments were made out of time;
- (b) The respondent should not have determined the assessments but should have raised additional assessments only, if he was empowered by Law and not barred by the lapse of time; 5
- (c) They infringe the rule prohibiting the retrospective imposition of tax as enshrined in Art. 24.3 of the Constitution;
- (d) The income includes income of the wife and thus it violates the principle of separate taxation enunciated by the Supreme Court in *Demetriades v. The Republic of Cyprus, through (1) The Minister of Finance and (2) The Commissioner of Income Tax*, (1977) 3 C.L.R. 213; 10 15
- (e) The investment income abroad is not taxable as it has not been remitted to Cyprus;
- (f) Income from rents is higher than the actual on the basis of the certificates marked "H" obtained by the applicant from His Majesty's Inspector of Taxes dated 30th March, 1981; 20
- (g) It was not open to the Commissioner to treat the amounts remitted to London in 1967 as income;
- (h) The sub judge decision is defective due to lack or defective reasoning; the rules of natural justice were violated; and, finally, 25
- (i) The sub judge decision was not reasonably open to the Commissioner.

Grounds (a), (b) and (c) will be dealt with together.

It was strenuously argued by counsel for the applicant that the law applicable for the year of assessment 1968 was the Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53/63) without any amendment or repeal or substitution thereof, and for the years 1969 and 1970 Law No. 53/63 as amended by the Taxes (Quantifying and Recovery) (Amendment) Law, 1969 (Law No. 61/69); that the law for 30 35

the quantification and recovery of taxes enacted in 1969 should apply for years of assessment subsequently to 1969, and the Assessment and Collection of Taxes Law No. 4/78, as amended by Laws No. 23/78 and 41/79, is applicable
5 only for the years of assessment after the date of its coming into operation. To hold otherwise would be contrary to Article 24.3 of the Constitution that provides: "No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect."

10 On the basis of this proposition he submitted that the statutory provision applicable for the year of assessment 1968 is s. 23 of Law 53/63 which refers only to additional assessments and no more. Such additional assessment should
15 be made within the year of assessment or within 6 years after the expiration thereof. Section 20 of Law No. 53/63 should be applied for that year of assessment without the amendment effected thereto by s. 8 of Law No. 61/69 and per force the substitution thereof by s. 20 of the basic Law No. 4/78 should be disregarded.

20 With regard to the years 1969 and 1970 he contended that subsection (2) of s. 23 is the only applicable statutory provision.

Relying on these propositions he submitted that s. 23
25 empowers the Commissioner of Income Tax to raise an additional assessment within 6 years after the expiration of the year of assessment for 1968 and within 12 years for the other two years of assessment, provided that the taxpayer has been guilty of fraud or wilful default. In order, however, to lift the 6 years' bar, the taxpayer must be
30 found guilty of fraud or wilful default by a competent Court of Law.

Counsel for the respondents said that the time bar is
for the raising of assessments. The sub judice decision is
35 a determination of the objections and though made outside the 6-year period, they are quite legitimate. The additional assessments for 1968 and 1969 and the assessment for 1970 were raised within the prescribed period of 6 years and only the determination of the objections due mainly to default of the taxpayer and the administratrix of his
40 estate remained pending until 1981. The decision was taken

in virtue of s. 20 (5) governing the determination of objections and not under s. 23 for the raising of additional assessments; that the Law applicable for the quantification and recovery of taxes is the Law obtaining at the time of such quantification and not at the time that the tax is imposed or charged and, therefore, the Law in force at the material time was the Assessment and Collection of Taxes Law, No. 4/78, as amended, and this is supported by the provisions of s. 59 of this Law as renumbered by s. 2 of Law No. 41/79.

It is a cardinal principle embodied in Article 24.3 of our Constitution that no tax, duty or rate of any kind whatsoever may be imposed with retrospective effect. Tax is imposed and charged under the relevant statutory provisions at the time such liability accrues, when the relevant taxable income was derived, and the subsequent assessment of the exact amount payable in respect thereof, provided the making of such assessment is authorised at the time of its making by legislation, would not amount to imposing tax with retrospective effect—(*Vasos Constantinou Kyriakides v. The Republic*, 4 R.S.C.C. 109).

The liability to pay tax accrued in the year when the income was earned irrespective of whether the Commissioner of Income Tax has served a notice of assessment on the taxpayer or not, and the income tax is deemed to have been imposed at the time when the income is earned and the liability actually accrued—(*Demetris Petrou Christou v. The Republic of Cyprus*, (1965) 3 C.L.R. 214; see, also, *Andreas Matsis v. The Republic*, (1969) 3 C.L.R. 245, a case on state duty).

The tax was imposed and charged under the Income Tax Laws in operation at the time, namely, the Income Tax Laws No. 58/61, 4/63, 21/66 and 60/69.

Law No. 53/63 is a Law to provide for machinery for quantification and recovery of taxes and for matters connected therewith. This law was amended by the Taxes (Quantifying and Recovery) (Amendment) Law, 1969 (No. 61/69), and it was repealed and substituted by Law No. 4/78, a law to consolidate and amend the Assessment and Collection of Taxes Law that was amended by Laws No.

23/78 and 41/79. This legislation regulates the machinery of assessment and appeals and not the jurisdiction to charge tax which is derived from the Income Tax Laws. It can only operate after the tax has been imposed or charged under another law - (*Christou case (supra)*); *The Republic of Cyprus v. Ioannis Chr. Frangos*, (1965) 3 C.L.R. 641).

Section 59 of the Assessment and Collection of Taxes Law, 1978 (Law No. 4/78, as renumbered by Law No. 41/79, s. 2, reads:-

10 -59. - (1) Οι περί Καθορισμού του Ποσού και Ανακλήσεως Φόρων Νόμοι του 1963 και 1969 δια του παρόντος καταργούνται, άνευ επηρεασμού παντός γενομένου ή παραλειφθέντος όπως γίνη δυνάμει τούτων:

15 Νοείται ότι, πάντες οι εκδοθέντες δυνάμει των καταργουμένων ως άνω Νόμων ή οι εκδοθέντες δυνάμει των εκάστοτε εν ισχύϊ περί Φορολογίας του Εισοδήματος Νόμων και διαφυλαχθέντες, δυνάμει των καταργουμένων ως άνω Νόμων Κανονισμοί, διατάγματα, διορισμοί και ειδοποιήσεις θεωρούνται ως εκδοθέντες δυνάμει του παρόντος Νόμου και εξακολουθούν ισχύοντες μέχρις ότου ανακληθώσιν, ακυρωθώσιν ή αντικατασταθώσιν δυνάμει του παρόντος Νόμου.

(2)

25 (3) Οιαδήποτε βεβαίωσις γενομένη δυνάμει των εκάστοτε εν ισχύϊ περί Φορολογίας του Εισοδήματος Νόμων ή οιαδήποτε νόμου ψηφισθέντος υπό Κοινοτικής Συνελεύσεως δια την επιβολήν προσωπικών εισφορών υπό μορφήν φόρου εισοδήματος και μη διευθετηθείσα τελικώς λογίζεται ως γενομένη δυνάμει των διατάξεων του παρόντος Νόμου, πάσα δε περαιτέρω σχετική ενέργεια, εις το στάδιον εις το οποίον ευρίσκεται κατά την ημερομηνίαν της ενάρξεως της ισχύος του παρόντος Νόμου, λαμβάνεται δυνάμει των διατάξεων του παρόντος Νόμου.

35 (4) Εάν υφίσταται οιαδήποτε υποχρέωσις δια την πληρωμήν φόρου δυνάμει των διατάξεων οιαδήποτε νόμου επιβαλόντος τον φόρον τούτον (περιλαμβανομένου νόμου ψηφισθέντος υπό Κοινοτικής Συνελεύσεως

και επιβαλόντος προσωπικήν εισφοράν υπό την μορφήν φόρου εισοδήματος) ο οποίος δεν τελεί εν ισχύι κατά την ημερομηνίαν της ενάρξεως της ισχύος του παρόντος Νόμου, και ο φόρος ούτος δεν καθωρίσθη ή/και εισεπράχθη κατα την ρηθείσαν ημέραν, ο φόρος επιβάλλεται ή/και εισπράττεται δυνάμει των διατάξεων του παρόντος Νόμου». 5

“59. (1) The Quantification and Recovery of Taxes Laws of 1963 and 1969 are hereby repealed without prejudice to anything done or omitted thereunder. 10

Provided that, all Regulations, Orders, appointments and notices issued under the Laws hereby repealed or under the Income Tax Laws for the time being in force and preserved, by virtue of the provisions of the Laws hereby repealed are deemed as issued under the present Law and continue to be in force until revoked, cancelled or replaced in accordance with the present Law. 15

(2)

(3) Any assessment made on the basis of the Income Tax Laws in force for the time being or of any Law of a Communal Assembly for the imposition of personal taxes in the form of income tax, and not finally settled, is deemed as having been made in accordance with the provisions of this Law, and any further relevant action, in the stage in which it is on the date of the coming into operation of the present Law, is taken in accordance with the provisions of the present Law. 20 25

(4) If any obligation exists for the payment of tax in accordance with the provisions of any Law imposing such tax (including a Law of a Communal Assembly, imposing a personal tax in the form of income tax) which is not in force on the date of the coming into operation of the present Law, and such tax has not been ascertained and/or was not collected on the date in question, the tax is imposed and/or collected in accordance with the provisions of this Law”). 30 35

Subsections (3) and (4) are almost identical to s. 50 (3)

and (4) of the Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53/63), that was judicially considered in *Frangos* case (supra). When liability for tax accrues and is neither met nor extinguished, the statutory provisions applicable for the quantification and recovery of such tax at the time of such quantification and assessment and recovery are the laws in force at this time. This does not amount to retrospective taxation nor is such law contrary to the provisions of Art. 24, paragraph 3, of the Constitution.

In the present case the original assessments and the additional assessments raised in 1974 and 1975 for the first two years were made within the period prescribed by the Law. The liability to pay the tax was neither met nor extinguished, and the assessment thereof has not been finally disposed until February, 1981, as the objections had not been determined. The Commissioner rightly acted under s.20 of the Assessment and Collection of Taxes Law, No. 4/78, as amended. There is no time limit for the determination of an objection. As the assessments were validly raised in 1970, 1974 and 1975, the fact that the objection against them was determined in 1981 does not affect the validity of the sub judice decision. In *Theofylahtos Mavrommatis v. The Republic of Cyprus*, (1966) 3 C.L.R. 143, at p. 150, Triantafyllides, J., as he then was, said:-

“Section 50(4) of Law No. 53/63 cannot be said to be itself a provision laying down the machinery for assessment, but it merely provides that the provisions of Law 53/63 shall be applicable to, inter alia, the assessment of tax payable because of a liability incurred under the provisions of any other Law which has ceased to have effect in the meantime”.

And on p. 151:-

“In the light of the above, I am of the opinion that the additional assessment raised on the 18th December, 1963, in respect of the year of assessment 1957, could validly be raised under section 23, because it was raised within six years after the end of such year of assessment, and in view of what I have already said about section 45 of Cap. 323—which is in all

material respects the same as section 23—I hold that the validity of such assessment is not affected by the fact that the objection against it was determined only on the 14th October, 1964”.

Under the provisions of s. 23 (2) of Law No. 4/78 (introduced in our legislation for the first time by s. 10 of Law No. 61/69) where a person has been guilty of fraud or wilful default, the time limit of six years mentioned in subsection (1) shall be increased to twelve years. It is not necessary for the lifting of the six years’ bar for a person to be found guilty of fraud or wilful default by a Court of Law. It is sufficient if the Commissioner on the evidence before him reasonably makes a finding to that effect. It is not permissible in the construction of a law to introduce words which are not found in the statute - (*Arumugam Pillai v. The Director-General of Inland Revenue*, (1981) S.T.C. 146; *Hawkins v. Fuller (Inspector of Taxes)*, (1982) S.T.C. 428). In this case, however, the matter does not arise as the sub judice decision is the determination of a pending objection and not an additional assessment.

It was argued that the respondent Commissioner in determining an objection has only a limited power, either to sustain the objection or to overrule it but not to increase the chargeable income. This proposition is untenable having regard to the clear provisions of the proviso to subsection (5) of s. 20 of the Assessment and Collection of Taxes Law, 1978, empowering the Director to determine the amount of the object of the tax of the person objecting at an amount higher than the taxation under objection. This proviso read in the context of the law as a whole empowers the Director to increase the amount of the object of the tax, when there is an objection, without resorting to the provisions of s. 23 for additional assessment. Furthermore there must be a finality to the process of the assessment of the tax and the determination of an objection should be the final stage in the process of the quantification of tax.

WIFE'S INCOME

The respondent charged in the name of the taxpayer the

income of his wife derived from rents of one-half share of a house in London.

Section 21 (1) of Law No. 58/61 read:-

5 "The income of a married woman living with her husband shall, for the purposes of this Law, be deemed as income of the husband and shall be taxed in the name of the husband".

10 "Income of a married woman" was defined in subsection (2) as income derived otherwise than by the exercise of the right safeguarded under Article 25 of the Constitution. This section was repealed and substituted and renumbered to section 22 by s. 15 of Law No. 60/69. The material part thereof is subsection (2) that reads:-

"22. - (1)

15 (2) Any income other than earned income derived by a married woman living with her husband shall, for the purposes of this Law, be deemed to be the income of the husband and shall be charged in the name of the husband:

20 Provided that the wife may be required to pay that part of the total tax charged upon the husband which bears the same proportion to that total tax as the income of the wife charged in the name of the husband bears to the total income of the husband and wife charged on the husband notwithstanding that assessment has not been made upon her".

30 In *Demetriades v. The Republic (Minister of Finance and Another)*, (1974) 3 C.L.R. 246, it was held by a Judge of this Court that s. 22 of the Income Tax Law and all other similar earlier tax provisions are unconstitutional as being repugnant to Articles 24 and 28 of our Constitution. This decision was upheld on appeal by the Full Bench, *sub nomine The Republic (Minister of Finance and Another) v. Demetrios Demetriades*, (1977) 3 C.L.R. 213.

35 As the legislation under which the income of the wife in the present case was deemed to be the income of the husband and was charged in his name is unconstitutional,

that part of the sub judice decision will be declared null and void and of no effect.

*INVESTMENT INCOME OF THE TAXPAYER
ABROAD*

The tax is payable at the rate or rates specified for each year of assessment upon the income of a person accruing from any rent in the year prior to it, i.e. income received from rents in 1967 is taxable under the Law in operation in 1968, the year of assessment, and rents of 1968 are subject to the Law in operation in 1969.

Section 5(1) of Law No. 58/61 read:-

«Τηρουμένων των διατάξεων του παρόντος Νόμου, δι' έκαστον φορολογικόν έτος επιβάλλεται, βάσει φορολογικών συντελεστών ειδικώτερον εν τοις εφεξής καθοριζομένων, φόρος επί του εισοδήματος εκ των κατωτέρω αναφερομένων πηγών παντός προσώπου, του κτωμένου ή προκύπτοντος εν τη Δημοκρατία ή αποστελλομένου και λαμβανομένου εις την Δημοκρατίαν εκ των κατωτέρω αναφερομένων πηγών».

(“Subject to the provisions of this Law, for each tax year a tax is imposed, on the basis of the income tax rates, hereinafter specified, on the income of any person from sources hereinafter referred to, acquired or derived in the Republic or sent and received in the Republic from the sources hereinafter referred to”).

The Income Tax (Amendment) Law, 1969 (Law No. 60/69), s. 4 (1), originally amended the aforesaid provisions by the deletion and substitution of paragraph (c) of s. 5 (2). The new statutory provision reads as follows:-

«Το σύνολον του εκτός της Δημοκρατίας προκύπτοντος εισοδήματος εξ επενδύσεως θα λογίζεται ως εισόδημα κτηθέν εν τη Δημοκρατία, είτε τούτο μετεφέρθη εις την Δημοκρατίαν είτε μη».

(“The whole of the investment income arising outside the Republic shall be deemed to be income derived in the Republic whether or not remitted to the Republic”).

“Investment income” is defined in Law 60/69, s. 2, as follows:-

«Εισόδημα εξ επενδύσεως’ σημαίνει οιονδήποτε εισόδημα το οποίο δεν είναι κερδαινόμενον εισόδημα»

5 (“Investment income’ means any income which is not earned income”).

“Earned income” («κερδαινόμενον εισόδημα») is defined in s.2 of Law 58/61 as follows:

10 «Κερδαινόμενον εισόδημα’ σημαίνει παν εισόδημα κτώμενον εξ οιασδήποτε εμπορικής ή βιομηχανικής επιχειρήσεως, εκ της ασκήσεως επιτηδεύματος ή βιοτεχνίας τινός, εξ ελευθέρου ή άλλου τινος επαγγέλματος, εκ μισθωτών υπηρεσιών, συντάξεων ή άλλων ετησίων προσόδων καταβαλλομένων λόγω ή αναφορικώς προς παρωχημένας μισθωτάς υπηρεσίας».

15 (“‘Earned income’ means all income derived from trading or industrial enterprise, from the carrying on of any business or handicraft, from any professional or other occupation, from salaried services, pensions or other yearly emoluments granted because of, or in respect of, rendered salaried services”).

The subsequent legislation did not amend in any way the definition of “earned income” in Law 58/61.

25 The rents that the share of the house of the taxpayer in London yielded are profits derived from sources not involving any productive efforts - (See *Vita Ora Co. Ltd. v. The Republic*, (1973) 3 C.L.R. 273 at p. 280; *Ioulia Mangli v. Republic* (1983) 3 C.L.R. 52).

30 The deceased derived the income from rents in London simply and solely because of his ownership of the house, and from the material before me it was investment income. This was not remitted to Cyprus. Therefore, the rents collected in 1967 could not be made the object of taxation in Cyprus. The sub judice decision in so far as it relates to
35 the rents of the taxpayer in London for 1967—year of assessment 1968— is null and void and of no effect.

The onus of satisfying the Court that an assessment is

excessive rests on the taxpayer—(*Solomonides v. The Republic*, (1968) 3 C.L.R. 105). The Commissioner in order to increase the amount of the object of the tax has to be satisfied from the facts and evidence before him and not to act on conjectures. Conjectures, however, are completely different from reasonable inferences drawn from the material before him. 5

The applicant complains that the income assessed by the Income Tax Authorities in England is lower than the income—rents—assessed by the respondent. The document on which reliance is placed was not before the Commissioner at the time he reached the sub judice decisions. Furthermore the Commissioner had detailed information in the letters of Michaelides on which he could base his assessment, which he did. 10 15

With regard to the £5,650.- remitted to London in April, 1967, the evidence before the Commissioner was that in April, 1967, whilst the taxpayer was in London, in order to pay for the purchase of the house at 38, Salisbury Road, London, N. 4, he used money which on his instructions were remitted to him through the Bank of Cyprus from Cyprus to London. In December, 1967, for the completion of the purchase of the house at 34, Umfreville Road, London, N. 4, the taxpayer remitted to Mr. Michaelides through the Bank of Cyprus £2,000.- which Michaelides collected and paid to the vendor. 20 25

It is noteworthy that until the production of these letters in Court, the taxpayer and the applicant were denying flatly that any money was remitted by the taxpayer to London, and indeed their complaint in Court was that these letters were not made available to the applicant earlier. 30

The approach of this Court in tax cases is different from the approach of the English Courts. In this country a recourse under Article 146 of the Constitution in a tax case is the same in every respect as any other recourse against any administrative decision liable to judicial control. The burden rests on the applicant to satisfy the Court that it should interfere with the subject-matter of the recourse. We have no jurisdiction to go into the merits of the taxation. The power of this Court is limited to the scrutiny of the 35 40

legality of the action, and to ascertain whether the Administration has exceeded the outer limits of its powers. Provided they confine their action within the ambit of their power, an organ of public administration remains the arbiter of the decision necessary to give effect to the Law; and so long as they make a correct assessment of the factual background and act in accordance with the notions of sound administration, their decision will not be faulted. In the end, the Courts must sustain their decision if it was reasonably open to them - (*Pikis v. The Republic*, (1965) 3 C.L.R. 131, 149; *Georghiades v. The Republic*, (1982) 3 C.L.R. 659; *Mangli v. The Republic*, (supra).)

In the oral address it was without stress contended that the rules of natural justice were violated by the failure of the Revenue to make available to the applicant the letters of Yiannakis Michaelides. This proposition is untenable. The facts disclosed in Michaelides' letters were within the knowledge of the taxpayer, and the administratrix is no other person than the trustee of the latter's estate and under the law the personal representatives of a deceased are answerable for doing of acts, matters and things as such person, if he were alive, would be required to do under the law—(Section 15 of Law No. 4/78). The applicant became the personal representative of the deceased as early as 14.6.78. The taxpayer—and by extension his personal representative—had a duty to submit all material necessary for the assessment of the object of the tax.

The rules of natural justice are not applicable in this tax case. In general no duty is cast upon administrative bodies with regard to purely administrative matters, not disciplinary, to make to a person available the information they have - (*Lefkos P. Georghiades v. The Republic*, (1972) 3 C.L.R. 157; *Five Bus Tour Limited v. The Republic*, (1983) 3 C.L.R. 793, 809; *Kontemeniotis v. C.B.C.*, (1983) 3 C.L.R. 1027, 1033-34; *Karatsi v. The Republic*, (1984) 3 C.L.R. 488).

The sub judice decision was taken on the evidence available to the Commissioner at the material time. Both the taxpayer and the administratrix of his estate, though a considerable time elapsed from the date the objections were raised, they failed to supply the respondent with any par-

ticalars whatsoever. Having regard to the totality of the material before the respondent at the material time, I am of the view, and so hold, that it was reasonably open to the Commissioner to reach the sub judge decision with the exception of the investment income of 1967 and the income of the wife. He did not take into consideration any fact which he should not and he did not fail to take into consideration any fact which he should have taken.

The sub judge decision is not faulty because of lack of or defective reasoning. The contents of the sub judge decision coupled with the material in the file constitute sufficient reasoning.

To sum up, income tax is imposed and charged under the relevant statutory provisions at the time such liability accrues. The quantification and recovery of taxes is governed by the law obtaining at the time of such quantification or recovery and not at the time that the tax is imposed or charged. The respondent Commissioner rightly acted under the Assessment and Collection of Taxes Law, No. 4/78, as amended. This does not amount to retrospective imposition of tax and is not repugnant to Article 24.3 of the Constitution. The additional assessments were made within the six-year period provided by s. 23 of the Income Tax legislation obtaining at the time. The six years' period is increased to twelve years in case where a person is found guilty on a proper finding on the facts and evidence before the Commissioner by the Commissioner that such a person is guilty of fraud or wilful default. It is not necessary for the taxpayer to be found guilty of fraud or wilful default by a Court of Law.

In the present case the respondent determined the objections. There is no time-limit for the determination of an objection and there is no abuse of power so far as the time of determination of the objections is concerned. His not deferring further the determination of the objections raised six to eleven years earlier was reasonable. The respondent under s. 20 (5) of the Assessment and Collection of Taxes Law, 1978, is empowered to determine the amount of the object of the tax of the person objecting at an amount higher than the taxation under objection. The income of

the wife cannot validly be deemed to be the income of the husband and it cannot be validly charged in the name of the husband; any statutory provisions to the contrary are repugnant to Articles 24 and 28 of the Constitution. The investment income of a taxpayer abroad not remitted in the Republic, prior to the coming into operation of Law No. 60/69, cannot be the object of income tax.

The rents from houses in London were profits derived from sources not involving any productive effort; is not earned income but investment income. The onus of satisfying the Court that an assessment is excessive rests on the taxpayer. The taxpayer and the administratrix of his estate failed to submit any particulars or material to the respondent. It was open to the respondent to act on the evidence available to him contained in the two letters of Michaelides, a close relative and manager of the affairs of the taxpayer in London. The sub judge decision on the evidence available to him was reasonably open to him and his appreciation of the factual situation is not such as an administrative Court can interfere with it. The rules of natural justice are not applicable in the present tax case. The sub judge decision is not faulty either due to lack or defective reasoning. It was reasonably open to the Commissioner, with the exception of the part thereof relating to the investment income of the taxpayer received in London in 1967 and the charge of the income of the wife in the name of the taxpayer.

In the result the sub judge decision is partly declared null and void and of no effect whatsoever in so far as it relates to the investment income of the taxpayer - rents - in London in 1967 and the taxation of the income of the wife in his name. The recourse, therefore, partly succeeds.

In all the circumstances of the case I make no order as to costs.

35

Sub judge decision partly annulled. No order as to costs.